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details of prehistoric culture the student will more profitably turn to Schrader's *Prehistoric Antiquities of the Aryan Peoples*, or to Canon Taylor's admirable little *Origin of the Aryans*. In all save the legal sections the work is so obviously out of touch with the most recent literature upon the subject that detailed discussion of its conclusions is unnecessary.

One feature of this volume deserves mention in passing. It affords additional proof of that tendency toward emphasis of environmental influences in history to which I have heretofore adverted at some length.¹ Thus the main purpose in the second book (p. 75) is "to bring out clearly the connection of the national character of a people with the soil upon which it lives;" or again (p. 226) to seize the "unparalleled opportunity" for proving the "causal connection between soil and people." In places, it must be confessed, traces of senility appear in the absurd development of this theorem; as for example (p. 84) where at great length the story of Cain and Abel, the former typefying agriculture, the other personating pastoral life, is laboriously developed into a general law of cultural progress. The work, with its interesting side-lights upon the origins of law, while but half finished at the author's death, marks the conclusion of a long life of marvellous intellectual activity.

WILLIAM Z. RIPLEY.

Law and Politics in the Middle Ages, with a Synoptic Table of Sources. By EDWARD JENKS, M.A., Reader in English Law in the University of Oxford. (New York: Henry Holt and Company. 1898. Pp. xiii, 352.)

THIS is a brilliant book, and it will be a perfect godsend to many a young student of legal history. It tries to do,—and, so far as exposition is concerned, in large measure succeeds in doing,—what Sir Henry Maine did in so masterly a manner: light up the forest of technical detail with a few great generalizations, and make even the forms of legal procedure illustrate social evolution. Fifteen years have passed since the last of Maine's notable books, the *Early Law and Custom*, was given to the world. During the interval, Seebohm, Maitland, and Round have made very large additions to our knowledge of early English institutions; while with Brunner and Schröder, Viollet and Esmein coming to be familiar names to English and American students, a beginning has been made in the direction of a Comparative Jurisprudence worthy of the name. Yet if the older generation of law students troubled themselves too little about history, the present generation are in some danger of being overwhelmed by the multiplicity of historical particulars commended to their attention. There might seem to be room for a new venture in generalization; and Mr. Jenks, with an experience unusually wide for a comparatively young writer,—including as it does personal observation of the workings of Aus-

¹ *Political Science Quarterly*, X. 636-655.

tralian democracy,—and with a style both clear and forcible, would seem to be in some ways peculiarly well qualified for the task. He has, indeed, produced a fascinating book. Mr. Jenks has not only large ideas and a large way of handling them ; he has also the gift of phrase. “The Frank Empire was a sham Empire,” “Trial by Jury gives the death-blow to trial by peers ;” phrases like these will cling to the memory.

Yet, though we congratulate the reader, we cannot but feel some regret that Mr. Jenks should have written the book just at the present stage of historical investigation. What he sets before us is a new key to mediæval history. This he finds in the struggle between the State and the Clan, and almost the whole book is a working-out of the thesis. The exception is the first two chapters ; in which he describes the “sources,” with a view both to explaining what they are, and to showing the inapplicability of the Austinian definition of “law.” This last would hardly seem necessary for those who had once read Maine’s lucid lectures on sovereignty ; but Mr. Jenks doubtless knows his audience. The remaining chapters, four-fifths of the book, are all occupied with an explanation of the way in which this struggle, first of the state against the clan proper and then against feudalism, which our author views as a reversion to the clan type, is reflected in the history of the administration of justice, of land settlement, of legal ideas of possession and property, and of the conception of contract.

But what is or was a “clan ?” This is Mr. Jenks’ pet word, and, so far as I know, he is the first writer to make much use of it. One has a right to expect something like a definition ; and yet throughout the book there is no more exact account than this,—“a body of relatives” “larger and somewhat (more) indefinite” than a “household” (p. 162). The author takes for granted that everybody knows what a “clan” is ; but as a matter of fact we are all very vague on the subject, and our notion of it shifts to and fro between a large “family” and a small “tribe.” It sometimes looks as if this were the case with Mr. Jenks also ; for much that he says about the state “using the law of inheritance as a means of destroying the clan” (pp. 225 *seq.*) might be regarded equally well as but steps in the destruction of the agnatic family. The word “clan” reminds us, to begin with, of Scotland. But the early history of the Scotch clan has yet to be written ; and any investigator will have to reckon with Skene’s view of it as a later development out of the tribe, owing to the pressure of economic conditions, and by means of something like contract. Where we are first introduced to the word by Mr. Jenks, we are told that the Teutonic state grew out of a “league of clans.” This is said to be a common result of war, and we are asked in a note (p. 99) to “see this idea excellently worked out by Morgan” in his chapter on the Iroquois Confederacy. But with Morgan the confederacy was a confederacy of “tribes,” on the basis of common *gentes* (in Morgan’s sense of *gentes*). Instead of being “not homogeneous” and “based on entirely different principles” from the clan (p. 74), Morgan’s confederacy arose by “natural growth,” and “demonstrates the

reality as well as persistency of the bond of kin" (*Ancient Society*, p. 134). With Mr. Jenks "clan" is apparently (in some passages) much the same as the Roman *gens* (p. 162). Then were the "Tacitean clans, the Chatti, the Chauci, the Cherusci" (p. 73) *gentes*? As soon as we begin to ask questions like these we must realize the need for a far more definite terminology than we as yet possess. "Family" and "gens" and "phratry" and "clan" and "tribe" must all be given a clear connotation before we can make any scientific use of them. Something is being done by Mr. Seebohm in his study of Celtic institutions, much by Mr. Baden-Powell in his description of Indian conditions. Both of these, indeed, throw about the adjective "tribal" somewhat too freely; and perhaps even more is to be hoped from anthropology, now that, thanks to Professor Westermarck, it also has got rid of the spectacles of theory. If Mr. Jenks could have waited until his starting-point had been a little clearer, his work, I am sure, would have been of more permanent value.

All criticism in detail is so relatively unimportant that it is hardly worth while dwelling upon it. But it may be of use to briefly set down a few points in the order in which they occur: P. 42. The comparison of the Plantagenet Assises with "the rules" which "the lord of a domain may make for its management, at least with the concurrence of his managing officials" (cf. pp. 90 and 99 n. 16) is surely hardly safe. It is difficult to reconcile with the remark that "we shall never understand medieval history unless we distinguish between the *domain* of the king which he held . . . as feudal proprietor, and the royal rights" (p. 88), or with the *de consilio omnium baronum* (Assise of Clarendon), the *per consilium et assensum . . . episcoporum et baronum . . .* (Assise of the Forest) of the ordinances themselves. With Mr. Jenks' view may be compared the judicious utterances of Bishop Stubbs, *Constitutional History*, I. § 160.

P. 66. The part played by Parliament would seem to be overstated. The peculiarity of English history lies not so much in the existence of a parliament as in its relation to the executive; especially during the Tudor period, when the executive, acting through the Council and Star Chamber, was uniquely successful in enforcing the law, and yet, for some reason or other, did not try to dispense with Parliament.

P. 152. "Tacitus describes . . . a shifting from one ploughland (*arvum*) to another. In other words . . . the Germans have discovered the secret of fallows and rotation of crops." See also the note 7, p. 185, where we are asked to "compare the discussion" of the Tacitus passage by Fustel de Coulanges in his *Recherches*. Whatever Fustel's positive conclusion may have been, and, though obscurely expressed, it seems to be *Feldgraswirtschaft*, his negative conclusion is clear. "Nous ne nous arrêterons pas à l'opinion de Eichhorn, qui a d'ailleurs été réfutée par Roscher et par Waitz. Il suffit de remarquer qu'il n'y a pas dans tout le chapitre un seul mot qui implique une alternance de produits agricoles ou une habitude régulière d'assolement." *Recherches*, p. 264.

P. 168. "In the Anglo-Saxon laws we note the appearance of the lord of land who takes his place as of right alongside of the reeve and

men of the township in the Hundred and Shire moots," referring to Schmid, App. XXI. 7, § 2, in which, however, there is no mention of any "men of the township" at all.

P. 169. "The village moot has been replaced by the hall moot." But has not Mr. Maitland made it clear that there is no evidence for a "village moot?" See recently, *Domesday Book and Beyond*, p. 353.

P. 213. That "even among the Ribuarian Franks . . . the conveyance of land took place in the public moot" is among the bits of evidence produced to show that "the other members of the village group had originally to be consulted." But as the same rule was common with regard to all sales (*e. g.*, p. 200, top), this fact, if it suggests any conclusion, suggests too much.

W. J. ASHLEY.

Feudal Relations between the Kings of England and Scotland under the Early Plantagenets. By CHARLES T. WYCKOFF. (Chicago : University Press. 1897. Pp. xv, 159.)

THIS doctoral dissertation is a monograph on a subject which has been dealt with at considerable length in certain historical works, namely the dependence or alleged dependence of Scotland from the time of Edward the Elder to the close of the thirteenth century. There was certainly an opening for a treatise on this question, setting forth all the evidence from first to last ; while the national prejudice shown by writers in Great Britain makes it specially appropriate that the task should be approached, as it were from without, by an American writer. Mr. Wyckoff has produced an admirable and most scholarly dissertation ; but one feels that his sympathies, throughout, are with the Scottish case. This, no doubt, is a natural reaction from the latest writer on the subject, Professor Freeman, who took an extreme line in his *History of the Norman Conquest*, arguing, throughout, against the conclusions of the Scottish historian Robertson.

Where, as in this case, the evidence is restricted, and has been long minutely examined not only by historical writers, but by diplomatic experts, it is scarcely possible to find anything new to say. Mr. Wyckoff devotes his chief efforts to distinguishing between the homage due for (1) the kingdom of Scotland, (2) Lothian, (3) Tyndale and other possessions to the south of the Tweed. His object is to show that advantage has been taken, on the English side, of the confusion naturally arising from the complex character of the relations between the kings of England and Scotland. Denying that the latter performed homage to an English overlord for their kingdom, he admits, of course, a homage rendered for possessions in England, and recognizes the ambiguous character of the relations as to Lothian. By the treaty of Falaise Henry II. extorted from William the Lion a real admission of his overlordship, as over the kingdom of Scotland ; but this Mr. Wyckoff urges was its earliest recognition. And the work of Henry, as we know, was undone by Richard.